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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,239	11/21/2003	Richard H. Tilton	23-0276	2185

7590

10/04/2005

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EXAMINER

PETERSON, KENNETH E

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,239

Applicant(s)

TILTON, RICHARD M.

Examiner

Kenneth E. Peterson

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 6-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>21nov03</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 6-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. The election was made without traverse in the reply filed on 10 August 05.

2. Claims 1 and 15 are objected to because on their respective line 8, the phrase "a arm" should be --an arm--.

Appropriate correction is required.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Malmgren '276, who shows a machine with all of the recited limitations including;

Vertical stanchions (on left and right sides).

Several horizontal support members extending between these vertical stanchions,

An arm member (34,49),

A hydraulic cylinder having a reservoir and control (figure 11),

A blade (56,68,68').

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5. Claims 1-5,15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Bracewell '377, who shows a machine with all of the recited limitations including:

Vertical stanchions (on left and right sides).

Several horizontal support members extending between these vertical stanchions,

An arm member (10,9),

A hydraulic cylinder having a reservoir and control (figure 6),

A blade (35,27).

A punch assembly (17),

A pivot portion (56),

A ram (e.g. 36).

A punch mating assembly (23).

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malmgren, who shows a machine with most of the recited limitations as set forth above, further including;

A punch assembly (79),

A pivot portion (33),

A ram (e.g. 65,67).

Malmgren's punch mating assembly is not shown. While Malmgren most assuredly was intended to have such a punch mating assembly, he did not bother to show it, and thus Examiner takes Official Notice that such is well known. An example of this is the patent to Kempen (28). It would have been obvious to one of ordinary skill in the art to have added a punch mating assembly to Malmgren, as is well known and taught by Kempen, in order for the punch to have something to mate with,

In regards to claim 18, the courts have long held that such issues of magnitude are considered obvious. It would have been obvious to one of ordinary skill in the art to have made Malmgren's punch have 80 tons of force and the ram 50 tons of force, in order to cut thru hard and thick materials.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bracewell '377, who shows a machine with most of the recited limitations as set forth above. In regards to claim 18, the courts have long held that such issues of magnitude are considered obvious. It would have been obvious to one of ordinary skill in the art to have made Bracewell's punch have 80 tons of force and the ram 50 tons of force, in order to cut thru hard and thick materials.

9. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The general concept of having a plurality of apertures for adjusting tool height is known. For example, see the teachings of Aff '993 and Thyng '575. However, neither Malmgren nor Bracewell lends itself to this type of modification, and especially to the specifics as set forth in claim 19.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 571-272-4512. The examiner can normally be reached on Mon-Thur, 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kp
September 20, 2005



KENNETH E. PETERSON
PRIMARY EXAMINER